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August 10, 2004

Mr. Charles Franz
Chief Information Officer (Acting)
National Telecommunication and Information Administration
United States Department of Commerce
Room 4888
1401 Constitution Avenue, N.W.
Washington, DC 20230

Dear Mr. Franz:

This petition is a request for correction of information sponsored by the National Telecommunications and Information Administration (NTIA) that is disseminated by the Internet Corporation for Assigned Names and Numbers (ICANN). This Request for Correction is being submitted by Jim Tozzi, Multinational Business Services, Inc. (MBS), and the Center for Regulatory Effectiveness (CRE) under Section 515 of Public Law 106-554, the Data Quality Act¹ and NTIA's "Section 515 Standards: Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Telecommunications and Information Administration."

I. CORRECTION SOUGHT

On the page 2 of ICANN's "Financial Statements, June 30, 2003 and 2002 (With Independent Auditors' Report Thereon)," the value for "accounts receivable, net" for 2003 should be changed from "3,361,252" to "2,150,252." On the same page, the value for "accounts receivable, net" for 2002 should be changed from "2,153,651" to "1,477,651."

ICANN disseminates the Financial Statements, under NTIA's sponsorship, via the internet at <http://icann.org/financials/financial-report-fye-30jun03.pdf>.

¹ 44 USC 3516 Statutory and Historical Notes.

II. REASON FOR CORRECTION

ICANN's "accounts receivable, net" data do not comply with OMB and NTIA standards for objectivity and utility because neither the data nor the accompanying commentary, reflect the fact that:

1. Without informing stakeholders, ICANN deviated from their stated accounting policy² of increasing their bad debt reserve to effectively write-off all invoices remaining unpaid for more than 180 days; and
2. ICANN did not note or otherwise explain that the unpaid invoices which they did not reserve against, i.e. did not write off, were based on verbal understandings and were not supported by written agreement.

Thus, stakeholders could not tell from the Financial Statements that a significant portion of ICANN's accounts receivable are long past due and not supported by written agreement.

ICANN's failure to create a reserve against the invoices that are more than 180 days past due and which are not supported by written agreement materially impairs the ability of stakeholders to evaluate: 1) ICANN's financial position; and 2) ICANN's resource requirements. The accounting information is particularly important to Registrars, resellers of registration services, and other stakeholders since, under terms of ICANN's contract with NTIA, the corporation may not charge fees that exceed the cost of providing the services specified in the contract. Stakeholders need accurate and reliable accounting data in order to assess the lawfulness of ICANN's fees.

The needed change to ICANN's net assets data makes a material difference in ICANN's financial standing. The needed restatement of the net accounts receivable data reduces the corporation's net accounts receivables by over 30% in 2002 and by 36% in 2003. The restatement would also reduce the ICANN's "total net assets" by 22% in 2002 and 32% in 2003. Currently, almost one-third of ICANN's net assets consist of long past due invoices that are not supported by written agreements.

Since audited financial statements are the official and authoritative portrayal of an organization's financial status, it is these statements that are relied on by stakeholders. Federal and state governments rely on ICANN's corporate tax returns which contain the same misleading accounting data as their Financial Statements.

Information discussing ICANN's decision to not reserve against aged and undocumented receivables is in a report prepared for ICANN by the Certified Public Accounting firm of Bremer & Hockenberg.³

² Bremer & Hockenberg, 6-Month Financial Report for Period Ending 31 December 2003 and 2002. <http://icann.org/financials/financial-report-fpe-31dec03.htm>

³ Ibid.

A detailed discussion of why ICANN's net accounts receivable data do not comply with OMB and NTIA information quality standards may be found in Section VI of this document.

III. DOCUMENTS IN WHICH ICANN DISSEMINATES THE ACCOUNTS RECEIVABLE DATA

ICANN is disseminating the accounts receivable data in at least three documents:

1. ICANN Financial Statements. "INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, Financial Statements, June 30, 2003 and 2002 (With Independent Auditors' Report Thereon)" prepared by KPMG. The non-compliant accounts receivable data is on page 2, second line under the heading "Assets." ICANN disseminates the document via the internet at <http://icann.org/financials/financial-report-fyc-30jun03.pdf>.
2. Internal Revenue Service Form 990. "Return of Organization Exempt From Income Tax, 2001". The non-compliant data is on page 3, line 47b, column (B) of the document. ICANN disseminates the document via the internet at <http://www.icann.org/financials/tax/us/01form990.pdf>.
3. California State Form 199. "California Exempt Organization Annual Information Return, 2001." The non-compliant data is on page 2, Schedule L, line 2, column (d) of the document. ICANN disseminates the document via the internet at <http://www.icann.org/financials/tax/california/01form199.pdf>.

IV. WHY JIM TOZZI, MULTINATIONAL BUSINESS SERVICES, INC., AND CRE ARE AFFECTED PERSONS

A. OMB and NTIA Definition of Affected Persons

NTIA's "Section 515 Standards: Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the National Telecommunications and Information Administration" ("Standards") define an "affected person" as "an individual or entity that uses...the disseminated information at issue."⁴ The CRE, Jim Tozzi, and MBS use the specific information for which correction is sought.

⁴NTIA Standards, Part 4.

B. Jim Tozzi, MBS, and CRE's Use of ICANN Data

Jim Tozzi and CRE have established the www.ICANNfocus.org website as a regulatory watchdog "to report on, and intervene when appropriate, in ICANN proceedings."⁵ In conducting its watchdog activities, CRE makes extensive use of ICANN disseminated information, including the specific information that is the subject of this Request for Correction.

Jim Tozzi reinforced the legal principle of harm to stakeholders from poor quality government disseminated/sponsored information in *Tozzi v. HHS*,⁶ a widely cited landmark legal decision by the United States Court of Appeals for the District of Columbia Circuit.

Multinational Business Services, Inc. is an authorized reseller of registrar services. Registrar services provided by MBS on a commercial basis include the registration of .com, .net, and .us domain names. MBS' domain registration business is significantly dependent on the continued operation and credibility of ICANN. MBS' legal agreements to sell domain registration services specifically require that MBS "must comply with all applicable terms and conditions, standards, policies, procedures, and practices laid down by ICANN..."⁷

CRE's ICANNfocus.org website is widely recognized as an internet governance watchdog and has been cited as such and utilized as an information resource by diverse stakeholders including, the Council of European Top Level Domain Registries (CENTR)⁸, the Government of Victoria,

⁵ About ICANNfocus, <http://thecre.com/icann/about.htm>.

⁶ <http://www.thecre.com/pdf/20020425-tozzi.pdf>

⁷ .COM .NET Domain Name Reseller Agreement.

⁸ <http://www.centri.org/docs/presentations/January-2004.pdf>

Australia⁹, academia¹⁰, internet news resources^{11,12}, blogs¹³, and other internet stakeholders around the globe^{14,15}.

In addition to serving as an information resource, CRE, as appropriate:

1. Makes policy recommendations to stakeholders;
2. Intervenes in governmental and ICANN proceedings; and
3. Litigates information quality and other matters.

CRE relies on accurate, complete and unbiased government-disseminated and government-sponsored information in analyzing issues and making policy recommendations on ICANN-related issues. Poor quality or otherwise unreliable information hampers CRE's ability to develop cogent, persuasive analyses and recommendations. Thus, CRE is materially harmed by ICANN-related information not meeting OMB and NTIA information quality standards.

Damage to ICANN's credibility resulting from the publication of flawed accounting data could jeopardize the corporation's ability to continue performing technical management functions under the terms of their contract and MOU with DOC. ICANN's contract with DOC explicitly states that the "Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions..."¹⁶ Thus, dissemination of faulty accounting data could constitute grounds for termination of ICANN's contract with the government to the serious detriment of MBS and other internet stakeholders.

⁹ <http://www.egov.vic.gov.au/Research/WebSiteIssues/websiteissues.htm>

¹⁰ <http://cyber.law.harvard.edu/home/uploads/310/2004-02.pdf>

¹¹ <http://feedz.info/modules.php?op=modload&name=HeadLines&c=505>

¹² <http://www.mail-archive.com/internet-news@lists.electric.gen.nz/msg00207.html>

¹³ <http://www.ipnewsblog.com/import/feed/38>

¹⁴ <http://it4managers.com/Default.asp?C=AL&R=&I=2>

¹⁵ <http://www.nux.at/newsportal/article.php/nux.dns/106.html>

¹⁶ National Telecommunications and Information Administration, Order For Supplies Or Services, Order No. DG1335-03-SE-0336, Section I.1(g).

C. MBS' Use of the Specific ICANN Data for Which Correction Is Requested

MBS uses ICANN's accounting data as one element of an ongoing assessment of whether the fees charged by ICANN are fair and equitable. Under the terms of NTIA's contract with ICANN, the fees charged by ICANN are required to be fair and equitable and not exceed the cost of meeting the requirements of the contract.

ICANN accounting data that is incomplete, unreliable and/or misleading harms the ability of MBS to effectively participate in ICANN proceedings and to participate in and/or initiate proceedings in other fora on issues concerning fees charged by ICANN. Furthermore, lack of accurate ICANN accounting data that is part of the formal record would make it more difficult to successfully challenge the appropriateness of the fees charged by ICANN that are paid by resellers, such as MBS. Thus, MBS has a direct and material interest in ensuring that ICANN's financial statements meet OMB and NTIA information quality standards.

D. CRE's Use of the Specific ICANN Data for Which Correction Is Requested

CRE researched, analyzed, discussed and disseminated information about ICANN's accounts receivable data, including a hypertext link to the information on ICANN's website, in an article entitled "Are ICANN's Accounting Practices Sound?" that was published on its ICANNfocus website on March 29, 2004¹⁷. CRE's analysis and reporting, i.e. "use" of the information in question subsequently was reprinted (with permission) and discussed by stakeholders on independent websites which report on ICANN-related issues, including Free2Innovate.net¹⁸ and ICANN Watch¹⁹

CRE also used the ICANN accounting data in communications with ICANN's accountants and for an article published on the ICANNfocus website on May 24, 2004, "Letters to ICANN's Accountants."²⁰

CRE also uses ICANN's accounting data in an ongoing evaluation of ICANN's management and of ICANN's budget and the associated fees and fee structure for registry services. Since, 1) NTIA's determination of the acceptability of ICANN's proposed fees is subject to the Data

¹⁷ <http://thecre.com/icann/funding-29mar2004.htm>

¹⁸ <http://free2innovate.net/archives/000186.html>

¹⁹ <http://www.icannwatch.org/article.pl?sid=04/03/30/2157223&mode=thread>

²⁰ <http://thecre.com/icann/funding-24may2004.htm>

Quality Act and NTIA's Section 515 Standards,²¹ and 2) ICANN's accounting data is a key element in assessing whether the charges proposed by the corporation comply with the requirements for such fees set by NTIA, CRE has need for reliable, accurate ICANN accounting data for the purpose of evaluating ICANN's fees and possibly intervening in current or future proceedings related to ICANN.

V. ICANN IS SUBJECT TO NTIA'S INFORMATION QUALITY GUIDELINES

ICANN is subject to the Section 515 of Public Law 106-554 because ICANN disseminates information that is "sponsored" by the Department of Commerce/NTIA.

A. OMB and NTIA Definition of Dissemination

NTIA's Standards, consistent with the Office of Management and Budget's ("OMB's") government-wide Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Information Disseminated by Federal Agencies²² ("Guidelines"), define "dissemination" as an "agency initiated or *sponsored* distribution of information to the public."²³

B. OMB and NTIA Definition of Sponsored Information

The NTIA Standards, utilizing OMB's language, define an "agency sponsored" distribution of information as referring "to situations where the Agency has directed a third party to distribute or release information, or where the Agency has the authority to review and approve the information before release."²⁴

NTIA's definition of "sponsored" information is further clarified by the text of the federal regulation cited and incorporated into OMB's government-wide definition of "dissemination"²⁵ that states:

²¹ See Section V. D. of this document.

²² 67 FR 8451-60.

²³ http://www.ntia.doc.gov/ntiahome/occ/ntiaiqguidelines_09252002.htm, page 2.
(emphasis added)

²⁴ Ibid.

²⁵ 67 FR 8460.

- ▶ “A federal agency is considered to “conduct or sponsor” a collection of information if the agency ... contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person, or in similar ways causes another ... partner in a cooperative agreement, or person, ... to obtain, solicit, or require the disclosure to third parties or the public of information by or for an agency.”²⁶

C. NTIA Requires ICANN to Provide Information to Third-Parties

NTIA directs ICANN to disseminate information to third-parties. NTIA’s instruments for requiring ICANN to disseminate information are:

1. The agency’s Internet Assigned Numbers Authority (IANA) functions purchase order;²⁷ and
2. The agency’s Memorandum of Understanding, Amendment 6²⁸ (“MOU”) with ICANN.

In the IANA functions contract, NTIA explicitly directs ICANN to disseminate information. For example:

- **Statement of Work, Contractor [ICANN] Requirements.** A sub-section of this portion of the purchase order states: “This function also includes the dissemination of the listings of assigned parameters through various means (including on-line publication) and the review of technical documents for consistency with assigned values.”²⁹

²⁶ 5 CFR 1320.3(d) (emphasis added).
(http://www.access.gpo.gov/nara/cfr/waisidx_03/5cfr1320_03.html)

²⁷ National Telecommunications and Information Administration, Order For Supplies Or Services, Order No. DG1335-03-SE-0336, 13 March 2003.

²⁸ Memorandum of Understanding Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers, Amendment 6, September 16, 2003.

²⁹ National Telecommunications and Information Administration, Order For Supplies Or Services, Order No. DG1335-03-SE-0336, Section C.2.1.1.1. (emphasis added).

- **Work Plan for Specific Tasks.** A subsection of this portion of the contract states: “In addition to assigning parameter values, the IANA functions also include the important task of making those parameter values publicly available.”³⁰

In the MOU, NTIA explicitly directs ICANN to disseminate information. For example:

- **Selection of New Top Level Domains (TLDs).** Section II.C.8.b of Amendment 6 of the MOU directs ICANN, with regard to implementing new TLDs, to provide “public explanation of the process, selection criteria, and the rationale for selection decisions;”
- **Publication of WHOIS Related Reports.** Section II.C.10.a of Amendment 6 of the MOU directs ICANN to “publish a report no later than March 31, 2004, and annually thereafter, providing statistical and narrative information on community experiences with the InterNIC WHOIS Data Problem Reports system. The report shall include statistics on the number of WHOIS data inaccuracies reported to date, the number of unique domain names with reported inaccuracies, and registrar handling of the submitted reports.”

CONCLUSION: NTIA sponsors the dissemination of ICANN information and that information is subject to the Data Quality Act and NTIA’s Section 515 information quality Standards.

D. The Government Has Authority to Review and Approve ICANN’s Fees Prior to Their Dissemination

ICANN’s contract with NTIA explicitly states that “On or after the effective date of this purchase order, the Contractor may establish and collect fees from third parties (i.e. other than the United States Government) for the functions performed under this purchase order provided the fee levels are approved by the Contracting Officer before going into effect, which approval shall not be withheld unreasonably provided the fee levels are fair and equitable and provided the aggregate fees charged during the term of this purchase order do not exceed the cost of providing the requirements of this purchase order.”³¹

Since NTIA is responsible for reviewing and approving fees charged by ICANN and, after approval, the fee information is disseminated to Registrars, those fees are subject to the Data Quality Act. Furthermore, the contract creates standards by which the information quality of fee data may be judged. Specifically:

³⁰ Ibid., Section J.E.1. (emphasis added).

³¹ National Telecommunications and Information Administration, Order For Supplies Or Services, Order No. DG1335-03-SE-0336, Section C.2.1.

1. The fees need to be fair and equitable; and
2. The sum of the fees cannot exceed the cost of providing the services specified by the contract. Thus, ICANN cannot charge fees for services that exceed the scope of the contract.

CONCLUSION: Fees charged by ICANN's constitute NTIA-sponsored information and are subject to the Data Quality Act and NTIA's Section 515 information quality Standards.

E. NTIA Has Authority to Review and Approve ICANN's Accounting Data

The government's contract with ICANN explicitly provides NTIA with the authority and the duty to review and approve ICANN's accounting data. ICANN's contract with NTIA states that "The Government will review the contractor's accounting data at anytime fees are charged to verify that the above conditions are being met."³²

Thus, the government has both the right and the duty to:

1. Review ICANN's accounting data; and
2. Rely on the accounting data to verify the ICANN is complying with contract terms and conditions.

In that the government is required to review and utilize ICANN's accounting data to assess ICANN's compliance with contract requirements, they also have a concomitant right to approve (or disapprove) the data. Therefore, the government has the authority to review and approve ICANN's accounting data.

The contract states that the government has the authority and the duty to review ICANN's accounting data whenever they charge fees. ICANN's budgets for 2001-2002³³, 2002-2003³⁴, and 2003-2004³⁵ clearly illustrate that the corporation charges fees for their services. Therefore, the government has the authority to review and approve the accounting data prior to its dissemination to the public.

³² Ibid.

³³ <http://www.icann.org/financials/budget-fy01-02-04jun01.htm>, Schedule A.

³⁴ <http://www.icann.org/financials/budget-fy02-03-28jun02.htm>, Section 7.

³⁵ <http://www.icann.org/financials/budget-fy02-03-28jun02.htm>, Budget Schedule and Accompanying Notes.

Since an NTIA official is named in the contract as the Contracting Officer's Technical Representative (COTR)³⁶ responsible for reviewing and approving ICANN's fees, among other functions, and since the contract states that NTIA "has initiated this agreement,"³⁷ NTIA is the government agency responsible for reviewing and approving ICANN's accounting data.

CONCLUSION: ICANN's accounting data constitutes NTIA-sponsored information and is subject to the Data Quality Act and NTIA's Section 515 information quality Standards.

F. NTIA's Authority to Review and Approve of ICANN's Net Assets Data Was In Effect When the Data Was Disseminated

The NTIA contract with ICANN providing the Agency with the authority to review and approve ICANN's accounting data was signed on March 13, 2003. The "Base Period" specified in the contract for ICANN to provide services is April 1, 2003 – September 30, 2003. Options for the provision of services into 2006 are provided for in the contract.

The ICANN Financial Statements that contain the accounts receivable data that is the subject of this petition are dated August 22, 2003.

Thus, the contract and NTIA's authority to review and approve ICANN's accounting data were in effect at the time that ICANN disseminated the data.

CONCLUSION: NTIA sponsors the dissemination of ICANN's accounting data, including the accounts receivable data contained in their Financial Statements, and that information is subject to the Data Quality Act and NTIA's Section 515 information quality Standards.

³⁶ Ibid., Section G.2.a.i.

³⁷ National Telecommunications and Information Administration, Order For Supplies Or Services, Order No. DG1335-03-SE-0336, Section C.1.1.

VI. NET ASSETS DATA IN ICANN'S FINANCIAL STATEMENTS VIOLATE OMB AND NTIA INFORMATION QUALITY GUIDELINES

A. ICANN's Accounts Receivable Data Do Not Comply With the OMB and NTIA Standards for Objectivity

OMB Definition of Objectivity. OMB's Guidelines, interpreting and implementing the Data Quality Act, define "quality" as encompassing the factors of objectivity, utility and integrity.³⁸

OMB's definition of "objectivity" includes two elements, presentation and substance. ICANN's net assets data do not comply with either element of objectivity.

The presentation element of objectivity is defined by OMB as including "whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation."³⁹

With regard to substance, OMB's Guidelines state that objectivity "involves a focus on ensuring accurate, reliable, and unbiased information."⁴⁰

NTIA Definition of Objectivity. NTIA's Standards include a definition of objectivity that is consistent with OMB's definition. The NTIA Standards state, "The presentation element includes whether disseminated information is presented in an accurate, clear, complete, and unbiased manner and in a proper context." The Standards go on to state that the "substance element involves a focus on ensuring accurate, reliable, and unbiased information."⁴¹

ICANN's Net Assets Data Do Not Comply with the Presentation Element of Objectivity. ICANN's net assets data fail to comply with each "presentation" sub-element of the NTIA definition of objectivity.

1. **Complete.** The net assets data are not complete since the data and accompanying commentary exclude key facts that are essential for understanding and interpreting the information:

³⁸ 67 FR 8453.

³⁹ Ibid., 8459. (emphasis added)

⁴⁰ Ibid.

⁴¹ NTIA Standards, page 2.

- a. ICANN made an exception to their accounting policy of creating a reserve against invoices that remain unpaid after 180 days; and
- b. The unpaid invoices for which ICANN made an exception to their reserve policy are not supported by written agreement.

The Certified Public Accounting firm of Bremer & Hockenberg which prepared an unaudited Financial Report for ICANN, determined that ICANN's decision to make an exception to their reserve policy was sufficiently significant that they highlight and discuss it in three separate places in their report:

- a. *Transmittal letter.* Bremer & Hockenberg's cover letter to ICANN states, "As described in Note C, it is the Company's stated policy to reserve for invoices remaining unpaid for more than 180 days. Management believes that it is appropriate to make an exception to this policy for certain accounts. Had a reserve been established in accordance with the stated policy, the net assets in the accompanying financial statements would have been reduced by approximately \$1,211,000 and \$676,000 as of December 31, 2003 and 2002, respectively."⁴²
- b. *Note B – Summary of Significant Accounting Policies.* Note B of Bremer & Hockenberg's Financial Report, under the sub-heading, "Concentration of Financial Risk," stated, "The accompanying financial statements include certain IP Address registry accounts receivable balances totaling approximately \$1,211,000 and \$676,000 as of December 31, 2003 and 2002, respectively. The inclusion of these receivables is based primarily on verbal understandings between ICANN and the participating registries. Such receivables and revenues are not supported by written agreements nor has any valuation allowance for collectibility been established relating to these accounts.

It is the policy of management to reserve against all invoices that remain unpaid for more than 180 days (see NOTE C)." ⁴³

- c. *Note C – Accounts Receivable.* Note C of Bremer & Hockenberg's Financial Report states, "As described in NOTE B, it is the policy of the Company to establish a reserve for all invoices that remain unpaid for more than 180 days. Management has deemed it appropriate to make an exception to this policy for accounts totaling \$1,211,000 and \$676,000 as of December 31, 2003 and 2002,

⁴² Bremer & Hockenberg, cover letter. (emphasis added)

⁴³ Ibid., Note B. (emphasis added)

respectively. Written agreements have not yet been obtained from the name and address registry operators from whom these balances are due."⁴⁴

CONCLUSION: Because ICANN's audited Financial Statements did not include essential information about the accounts receivable data, the data are incomplete and do not comply with NTIA's information quality Standards for objectivity.

2. Accurate. The accounts receivable data are not accurate since the data are misleading in the absence of information concerning ICANN's substantial deviation from their stated accounting policy.
3. Clear. The accounts receivable data are not clear since the presentation does not make it clear that ICANN deviated from their stated accounting policy.
4. Unbiased. ICANN's Financial Statements are biased since, based on ICANN's own stated accounting policy, the accounts receivable are overstated by \$1,211,000 in 2003 and \$676,000 in 2002.
5. Proper Context. The accounts receivable data were not placed in the proper context in the Financial Statements since critical information about exceptions made to ICANN's accounting policies was omitted.

ICANN's Net Assets Data Do Not Comply with the Substance Element of Objectivity. NTIA's net assets data fail to comply with each "substantive" sub-element of the NTIA definition of objectivity. Of greatest importance, the data cannot be relied by CRE, Jim Tozzi and MBS since they do not accurately and objectively provide an unbiased picture of ICANN's accounts receivable, and, thus, of ICANN's overall financial situation.

ICANN's Net Assets Data Are Not Objective, Despite Being Audited. Since the ICANN Financial Statements in question are audited, the auditing process could, potentially, be considered a form of peer review. The OMB Guidelines state that data which has gone through "formal, independent, external peer review" may "generally be presumed to be of acceptable objectivity." However, the Guidelines go on to explain that "this presumption is rebuttable based on a persuasive showing by the petitioner in a particular instance."⁴⁵ Similarly, NTIA's Standards note that "the requester has the burden of rebutting the presumption that information subjected to formal, independent peer review is objective."

⁴⁴ Ibid., Note C. {emphasis added)

⁴⁵ 67 FR 8459.

The information provided by Bremer & Hockenberg demonstrating that ICANN's audited Financial Statements are missing essential information constitute a detailed and conclusive rebuttal of any presumption of objectivity that may be associated with the auditing process.

B. ICANN's Accounts Receivable Data Do Not Comply With the OMB and NTIA Standards for Utility

OMB Definition of Utility. OMB's Guidelines define "utility" as referring to "the usefulness of the information to its intended users, including the public. ... As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, the agency must take care to ensure that transparency has been addressed in its review of the information."⁴⁶

NTIA Definition of Utility. NTIA's Standards adhere to the OMB Guidelines and explain that "when transparency of information is relevant to assessing the information's usefulness from the public's perspective, NTIA takes care to ensure that transparency has been addressed in its review of the information."⁴⁷

ICANN's Accounts Receivable Data Are Not Transparent and Fail to Meet OMB and NTIA Utility Standards. Transparency is essential to understanding accounting data. The financial data in accounting statements can only be understood, i.e. have utility, when those statements are prepared according to open and transparent policies and standards. NTIA, citing OMB language, states that "transparency — and ultimately reproducibility, is a matter of demonstrating how results were achieved."⁴⁸

However, with respect to ICANN's accounts receivable data, ICANN has not demonstrated or explained how their results were achieved. Moreover, by deviating from their stated accounts receivable accounting policy without noting that fact, the results were achieved in contradiction to their stated explanation of how the results were achieved. ICANN's accounts receivable data, therefore, do not comply with the OMB and NTIA standards for utility.

⁴⁶ Ibid.

⁴⁷ NTIA Standards, page 2.

⁴⁸ Ibid.

C. ICANN's Net Assets Data Do Not Meet the OMB and NTIA Quality Standards for Influential Financial Information

In addition to not meeting the basic standards for information quality that apply to all data, ICANN's net assets data also do not meet the higher standards that apply to influential financial information.

OMB and NTIA Definitions of Influential Information. OMB's Guidelines define "influential" information as information "that will have or does have a clear and substantial impact on important public sector policies or private sector decisions."⁴⁹ NTIA similarly defines "influential" to mean "that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public sector policies and private sector decisions."

ICANN's Accounts Receivable Data Are Influential Financial Information. ICANN's accounting data, of which accounts receivable is a key and integral component, have a clear and substantial impact on important public sector policies and on important private sector decisions.

With respect to the public sector, as NTIA's contract with ICANN explains, the accounting data are used by the Agency to determine whether or not to approve ICANN's proposed fees to Registrars. Thus, NTIA uses the accounting data as the basis for decisions that have a significant financial impact on Registrars throughout the world and also an impact on domain name holders around the globe. Since NTIA decisions on ICANN's proposed fees determine the resources the organization has for governing the internet, NTIA's decision on those proposed fees has a major impact on the extent to which ICANN is able to regulate the internet.

ICANN's fees that are subject to NTIA approval also have a clear and substantial impact on the decisions by private sector entities, including decisions on whether or not to remain in the Registrar business, and on the level of competition in the global market for Registrar services.

For example, an alliance of over 50 Registrars, in discussing the expected impact of the proposed new ICANN fees, has stated that "A lot of Registrars will go out of business. A lot of new applicants will get discouraged. In effect the number of ICANN Registrars will reduce considerably to a small set of large monopolistic registrars..."⁵⁰ Therefore, since ICANN's accounting data is used by NTIA for approving (or disapproving) ICANN's proposed fees, the data is influential financial information under both OMB and NTIA definitions of the term.

⁴⁹ 67 FR 8460.

⁵⁰ <http://icannbudget.org/>

ICANN's Accounts Receivable Data Do Not Comply With OMB Standards for Influential Information. OMB's Guidelines states that the "reproducibility standard applicable to influential scientific, financial, or statistical information is intended to ensure that information disseminated by agencies is sufficiently transparent in terms of data and methods of analysis that it would be feasible for a replication to be conducted. The fact that the use of original and supporting data and analytic results have been deemed 'defensible' by peer-review procedures does not necessarily imply that the results are transparent and replicable."⁵¹

OMB goes on to explain that "agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public."⁵²

ICANN's accounts receivable data and accompanying commentary do not provide sufficient transparency to allow for independent reanalysis by a qualified member of the public. Specifically, it would not be possible for a qualified person to undertake such reanalysis of ICANN's accounts receivable data, since:

1. Over one-third of ICANN's accounts receivable in 2003 were "based primarily on verbal understandings" and "are not supported by written agreements."
2. ICANN materially deviated from their stated accounting policy without noting such deviation.

CONCLUSION: ICANN's accounts receivable data are influential financial information and do not meet the information quality standards for such information.

VII. REQUESTED INFORMATION CORRECTION

Jim Tozzi, MBS and CRE request that NTIA direct ICANN to bring their Agency-sponsored accounting data into compliance with OMB and NTIA information quality standards. The complainants are not seeking policy changes, only that NTIA ensure that Agency-sponsored ICANN data is disseminated in such a manner that it complies with all applicable information quality standards.

On the page 2 of ICANN's "Financial Statements, June 30, 2003 and 2002 (With Independent Auditors' Report Thereon)," the value for "accounts receivable, net" for 2003 should be

⁵¹ 67 FR 8455.

⁵² 67 FR 8456.

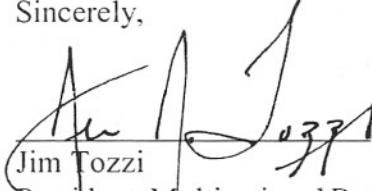
changed from "3,361,252" to "2,150,252." On the same page, the value for "accounts receivable, net" for 2002 should be changed from "2,153,651" to "1,477,651."

As discussed in Section III, the accounts receivable data in ICANN's IRS Form 990 and California State Form 199 also require the same correction as the Financial Statements document.

Should restatement of the 2002 and 2003 accounts receivable data be impossible, it is essential that the text accompanying the data be added that clearly:

1. States that ICANN's management decided to deviate from their stated accounting policy of reserving against invoices remaining unpaid after more than 180 days;
2. Explains the specific nature of the deviation from stated accounting policy, i.e. not reserving against invoices remaining unpaid for more 180 days which are not supported by written agreement;
3. Explains the reason for the deviation from normal accounting policy; and
4. Details each specific instance in which ICANN deviated from stated policy including:
 - a. The amount of the deviation;
 - b. The date of the original invoice;
 - c. A description of the documentation, if any, supporting the invoice;
 - d. The date on which ICANN decided to deviate from stated accounting policy; and
 - e. The amount of the deviation.

Sincerely,



Jim Tozzi

President, Multinational Business Services, Inc.